CF0000064200

(2)

CR.A.NO.83/2001

XII-185(Jail)C.J.P.R./9-94

APPEAL OF PRISONER

No..सप्रा/०-32/2000.. Name- - मनीराम चौहान - - - - - - - -

Father's Name- - मोहरराम - - - - - - - - - - - - - - - - - - -

Residence- मु- जामरा पो. काकू जि. बाड़मेर age- 35 साल - - -

Sentenced to- आजीवन कारावास - on- 15-12-2000 - -

under Section- - धारा- 302- भा०दं०वि० by -अप्पर सेशन जज बाड़मेर (कैम्प)

- -

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1. Date of Application for copy of Judgement- अपील निर्णय प्रति लिखित।
2. Date on which copy received- - - -१-१-२००१ - - - - - - - -
3. Date on which Appeal sent- - - - १०-१-२००१ - - - - - - - -
4. Whether the prisoner wishes to be represented or not- - - - -

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No- -सप्रा/०- 32/2000 - - -Name- मनीराम चौहान उ० मोहरराम - -

confined in - - जे-डीएच - - -Jail- - बिलाड़ा - - - - - - - - - -

No- - - - ६२५ - - - - Dated- -10-1-2001 - -199 - - - - - -

Forwarded to the-श्री मान् दफ्तर मह० सान्नीध्य उच्च न्यायालय जोधपुर (कैम्प)
to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent
.....अधीक्षक जेल बिलाड़ा.....

- -

Date of receipt in- - - - - - -Office- - - - - - - - - - - -

Date of receipt of record to accompany the- - - - - - - - - -

Memo of Appeal to the Appellate Court- - - - - - - - - - - -

- -

No- - - - - - - - - - - - - Date.....

Forwarded to the:

- -

Date of receipt in Appellate court- - - - - - - - - - - - - -

(15)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr.A.No. 83/01 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: HON'BLE SHRI L.C. BHADOO AND HON'BLE SHRI DHIRENDRA MISHRA, JJ

Criminal Appeal No. 83/2001

Appellant : Maniram Chauhan

Versus

Respondent : State of Madhya Pradesh (now Chhattisgarh

Shri Rajesh Jain, Advocate for the appellant.

Shri U.K.S. Chandel, Panel Lawyer for the State.

ORAL JUDGMENT

(20-12-2006)

Per L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 15-12-2000 passed by learned Sessions Judge, Dharmjaigarh in Sessions Trial No. 32/2000 whereby learned Sessions Judge after holding the accused guilty for commission of offence under Section 302 of I.P.C. for committing murder of his wife Parvatibai, sentenced him to undergo imprisonment for life.

2. The case of the prosecution in brief is that in the intervening night of 4th and 5th December, 1999, accused committed murder of his wife Parvatibai by strangulation. Merg intimation Ex. P-3 was given by Vishnu Prasad P.W. 2 to Police

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr. A. No. 83/01

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Station Kapu to the effect that in the last night his brother-in-law Maniram has committed murder of his wife Parvatibai by pressing her neck and her body is lying in mustard field of Negi. The body was seen by him along with Gulabsingh, Kaniram and Mandirsai. Receiving this report, Station House Officer, Police Station, Kapu registered a crime under Section 302 of I.P.C. under Ex. P-4, left for the scene of occurrence, prepared site plan Ex. P-5 of the place of occurrence, after giving notice Ex. P-1 to the Panchas, prepared inquest Ex. P-2 on the body of Parvatibai. The body of Parvatibai was sent for post mortem examination to Government Hospital, Dharmjaigarh under Ex. P-7 where P.W. 8 Dr. Anil Kumar conducted post mortem on the body of Parvatibai and prepared report Ex. P-9 in which he opined that Parvatibai died due to asphyxia as a result of throttling and death was homicidal in nature. After usual investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate First Class, Dharmjaigarh who in turn committed the case to the Sessions Judge, Dharmjaigarh where prosecution examined 14 witnesses to establish the charge against the accused. Statement of accused was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. He explained that in the morning he left his house for work and returned in the evening and in the night his wife was sleeping, when he woke up in the

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मामला क्रमांक Cr. A-No. 83/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

morning, his wife was not there, therefore he went in search of his wife near the field where he saw that Krishna and Birbal were standing and he bolted Birbal in his house and left for lodging the report. Learned Sessions Judge after hearing the learned counsel for the respective parties convicted and sentenced the accused as aforementioned.

3. We have heard Shri Rajesh Jain, Advocate on behalf of the accused-appellant and Shri U.K.S. Chandel, Panel Lawyer on behalf of the State.

4. As far as nature of death of Parvatibai is concerned, P.W. 8 Dr. Anil Kumar who conducted post mortem on the body of Parvatibai has stated that there were 11 contusions on the neck, chin and face of the deceased, even forearm of the deceased was fractured, there was contusion in oval shape on the neck which was on thyroid cartilage, clotted blood was present on account of injury No. 3, 5, 6 and 7, Parvatibai died on account of injuries present on the neck as a result of asphyxia and the death was homicidal in nature, therefore, in view of the above medical evidence, it is established that the death of Parvatibai was homicidal in nature.

5. As far as involvement of the accused in crime in question is concerned, there is no ocular or direct evidence in this matter. As per settled law in order to rest conviction based on the circumstantial evidence, as per the decision of the Apex

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मामला क्रमांक Cr. A-No. 83/01 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Court, in the matter of **Dhananjay Chatterjee –v- State of W.B.** reported in **(1994(2)SCC 220**, the circumstantial evidence must satisfy the following tests:-

a. The circumstances from which an inference of guilt is drawn must be cogently and firmly established;

b,. Those circumstances should be of a definite tendency unerringly pointing towards the guilty of the accused;

c. The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

d. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

6. In the present case there is evidence that the witnesses heard screams and sound of beating from the house of the accused and that the accused was in the habit of quarreling with deceased and he used to beat her, that the body of the deceased was found in mustard field and there were injuries on the neck and other portions of

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मामला क्रमांक ..... Cr. A. No. 83/2001 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the body. P.W. 2 Vishnu Prasad who lodged the report has turned hostile and he has simply stated that he saw the body of Parvatibai in the mustard field and he lodged the report. He has been cross-examined by the Government Pleader. He has stated that on enquiry from the accused, the accused confessed before Jainandan that he has committed murder of his wife by pressing his neck on account of her illicit relation and thereafter threw her body in the mustard field and that place is at a distance of 50 Ft. from the house of the accused. P.W. 4 Vimla, another wife of the accused has stated that Parvatibai was her sister, accused used to beat her and on account of that, she has died. On the date of incident, the accused slapped Parvatibai twice. She left the house to go to Sukhbasi Para and her husband was beating Parvati saying that she is not a good character lady. On the next day, she came to know that Parvatibai has been murdered. P.W. 5 Birbal has stated that his house is in the vicinity of the house of the accused. In the fateful night, he heard the sound of beating from the house of accused Maniram. When he tried to come out of his house, he noted that his house was bolted from outside and, thereafter he came out of his house by removing tiles of roof. In cross-examination also he has stated that he heard the sound of beating from the house of Maniram. P.W. 6 Krishna Prasad has also stated that in the fateful night, he was sleeping after taking dinner, he heard the sound of beating from the house of the accused at about 10-11 p.m. in the night.

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मामला क्रमांक Cr. A. No. 83/2001 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

When he tried to open his door, he noted that the door was locked from outside, therefore he came out of his house by removing tiles of roof. P.W. 9 Maheshwari Singh, material witness in this case and Pradhan of the village has stated that at about 11 in the night of 4-12-1999, accused brought his wife abusing to his house, on which he asked the accused as to why he has come to his house in late night, the accused asked him to enquire from his wife, on which he enquired from Parvatibai as to what happened, she told that Birbal is responsible for beating, thereafter he again enquired from Maniram, he replied that today he has caught the thief and the accused further said that he has bolted Birbal in the house. Thereafter he advised Maniram and his wife not to quarrel in the night and they should get the matter settled in Panchayat, thereafter they left for their house. Therefore from the above evidence, it is established that the accused was doubting the fidelity of his wife and on the fateful day, these witnesses heard sound of beating from the house of accused and even the accused and his deceased wife Parvati both went to the house of Maheshwari Singh P.W. 9 just before the incident and they were complaining against each other. Even the other wife P.W. 4 Vimla has also stated that accused on the fateful day was beating Parvatibai and to that extent from the evidence of this witness, it is established that accused was angry with his wife, and therefore, he was beating his wife. Even the body of the deceased was found in the vicinity of the house of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused about 50 ft. from the house of accused in mustard field of Negi. When the accused and the deceased left the house of P.W. 9 Maheshwari Singh, burden lies on the accused to explain the circumstances under which the injuries were sustained by deceased Parvatibai and how she sustained those injuries and died. Section 106 of the Evidence Act envisages that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him, therefore, the burden was on the accused to discharge and explain how Parvatibai sustained injuries and died. The same burden has not been discharged by the accused. He has simply stated that he was sleeping in his house with Parvatibai and during that period Parvatibai left the house, therefore, from the above strong circumstantial evidence, involvement of the accused in the crime in question is established and even the body of the deceased was found in the vicinity of the accused.

7. Counsel for the accused argued that case of the accused is covered under exception 1 of section 300 of the IPC, therefore, the offence against the accused does not travel beyond section 304-II of the IPC. For this argument he placed reliance in the decision of Apex Court in the matter of **State of U.P. Vs. Laxmi** reported in **1998 Cr.L.J 1411**. In that case the accused was facing the charge of murder of his wife. The defence of the accused was insanity and the Court held that mere fact that accused adopted another alternative defence during his examination under Section

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

313 of the Cr.P.C. without referring to Exception No. 1 Section 300 of I.P.C. is not enough to deny him of the benefit of the Exception, if the Court can cull out materials from evidence pointing to the existence of circumstances leading to that exception. It is not the law that failure to set up such a defence would foreclose the right to rely on the exception once and for all. It is axiomatic that burden on the accused to prove any fact can be discharged either through defence evidence or even through prosecution evidence by showing a preponderance of probability. The Court further held that the accused was not well-disposed to his wife as she was always speaking against his drinking habits. We are inclined to think that, while considering the manner in which he had suddenly pounched upon his young wife who bore two children to him and smashed her head during the early hours he would have had some other strong cause which probably would have taken place within a short time prior to the murder. Certain broad features looming large in evidence help us in that line of thinking. On the same principle if we look into the evidence of prosecution, PW-2 Vishnu Prasad has stated in his evidence that accused made confession before Jainandan and said that he has committed murder of his wife on account of illicit relation. Similarly, PW-9 Maheshwari Singh in para 1 of his examination-in-chief has stated that on the fateful night at about 11 p.m. the accused and deceased Parwati Bai came to his house quarreling and on inquiry Maniram disclosed that today he has

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

caught the thief. He has further stated that today he saw Birbal with Parwati Bai. Even though in this line word "Maniram" has been typed out in place of "Parwati". On this, he inquired as to where is Birbal, Maniram disclosed that he has bolted him inside the house, on which he persuaded both Maniram and his wife not to quarrel and they left for their house. This evidence has come on record in the examination-in-chief of these witnesses not on any suggestion, therefore, these factors suggest that the accused was doubting the fidelity of his wife and on the fateful day he saw the deceased with prosecution witness Birbal in his house and that infuriated him and he brought his wife to Maheshwari Singh PW-9 and on his persuasion they returned back and in that process something might have happened between the two and that infuriated the accused and on that he pressed the neck of the deceased. Therefore, it can safely be inferred from the prosecution evidence that the accused pressed neck of his wife in sudden provocation and the offence is squarely covered under exception 1 to section 300 of the IPC as per the principle envisaged by the Supreme Court in the matter of **State of U.P.** (supra). Therefore, we are of the considered opinion that the finding of the trial Court convicting the accused under Section 302 of I.P.C. cannot be sustained and the offence against the accused under these circumstances is made out under Section 304 Part I of I.P.C.

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मामला क्रमांक Cr-A-No.83/01 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	8. In the result, the appeal is partly allowed. The conviction and sentence imposed upon the accused under Section 302 of I.P.C. are set aside, instead thereof the accused is convicted under Section 304 Part I of I.P.C. and sentenced to undergo R.I. for 10 years. It is stated that the accused is in detention since 7-12-1999 till date. The accused shall be entitled for the set off of the above detention period against the sentence imposed upon him. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

Pathak

P.T.O.